

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, JULY 18, 2017
MEETING ROOM B, CLAY COUNTY COURTHOUSE**

Members Present: Amos Baer, Perry Bushaw, Greg Anderson, Paul Krabbenhoft, Pamela Harper.

Members Absent: None.

Others Present: Tim Magnusson, Lynne Spaeth, Jenny Samarzja, Jerry Thoenke.

Approval of Agenda:

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board approved the agenda.

Approval of Minutes:

On motion by Pamela Harper, seconded by Paul Krabbenhoft, and unanimously carried, the Board approved the May 16, 2017 minutes as presented.

JERRY AND LORRIE THOEMKE - REQUEST FOR VARIANCE

The applicants are seeking approval of a variance to allow a reduction in the required setback from a structure to the Ordinary High Water (OHW) level of a Natural Environment lake. The County Code requires a 150-foot setback from a structure to the OHW. The affected property is the E 24 feet of Lot 5 and Lot 6, Sather's Subdivision, Section 15, T138N, R44W (Parke Twp.) in the Shoreland-Residential (S-R) zoning district.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board opened the public hearing.

Tim Magnusson, Planning Director, displayed a photo of the property. He pointed out the ridges, plateaus and how the land drops off to beach level. The current storage units are located on the eastern portion of the property. The request is for a new 12'x16' building to be built approximately 30 feet from the existing waterline. The site cannot be pushed back because the land begins to slope uphill. If the 150-foot setback was met, it would be between the cabin and the road. The applicant intends to use the building for storage of lake equipment. He showed the property to the east where an old boat house is located as well as the property to the west with a similar boathouse. The boathouses are closer to the water than his proposed structure. Magnusson clarified the buildings would not currently be allowed. The applicant will not remove any vegetation. The applicant's house and most of the other houses on that side of the lake are not setback 150 feet from the water. The lots were platted in the early 1970's and do not meet current County standards. This is a Natural Environment lake, but Magnusson stated because it had more development on it than other lakes, it was zoned Residential. No other Natural Environmental lake has this zoning. Normally the setback on a Natural Environmental lake is 200 feet. The setback on Lake 15 follows the Residential lake setback of 150 feet. Lake 15 has an inlet and an outlet and Magnusson is not aware of any issues with the lake rising.

Jerry Thoemke, the applicant, was present for questions. Mr. Thoemke stated his intention is to clean up the property and provide adequate storage for paddle boards, canoes, kayak, etc. The current storage shed existed when he purchased the property. He stated that his contractor advised not building too close to the slope due to the water drainage. It would be costly and require a lot of upkeep. The current shed is not set on concrete. The new structure would be constructed of wood situated on concrete pedestals, to allow water to drain underneath of it. In addition, the shed would be flat topped with 8-foot side walls. The shingles and siding would correspond with the house. The applicant confirmed he had no intention of cutting down any trees but may have to trim some branches. Thoemke explained if the structure was moved farther to the west, it would be farther from the lake but it would block the lake view.

On motion by Paul Krabbenhoft, seconded by Pamela Harper, and unanimously carried, the Board closed the public hearing.

The Board understood the applicant's intent to build a larger storage building. However, they surmised it appeared more of new construction, rather than a replacement. Since the current sheds are not anchored or permanent, the Board speculated whether they would be considered permanent structures. Jenny Samarzja quoted the Ordinance definition of a "Structure." The Board discussed future variance requests and fairness while conforming to the ordinances. The problem meeting the setback is due to terrain and lot size. Practical Difficulty #2 was discussed at length. The sideyard setback will be maintained at 10 feet. The size of the shed was questioned and the Board felt if the new structure was built the same size as the current structures, that would be appropriate. Samarzja quoted Clay County Ordinance language referencing non-conforming structures and damage/replacement of same. She noted that the County's ordinance states that non-conforming buildings cannot be increased in size. The Supreme Court ruling was discussed at length.

The Board weighed practical difficulties, specifically #2, "The plight of the landowner is due to circumstances unique to the property not created by the landowner." The Board felt the issue was the new structure being placed even closer than the current structures. They were acceptable to rebuilding a new structure, but no larger or closer to the water.

On motion by Paul Krabbenhoft, and seconded by Perry Bushaw, and carried 3/0, with Perry Bushaw, Paul Krabbenhoft and Pamela Harper voting yes, Greg Anderson abstaining his vote, and the Chair not voting, the Board of Adjustment approved Jerry and Lorrie Thoemke's request to allow a reduction in the required setback from a structure to the Ordinary High Water (OHW) level of a Natural Environment lake on property located in the E 24 feet of Lot 5 and Lot 6, Sather's Subdivision, Section 15, T138N, R44W (Parke Township), for the following reasons and with the following conditions:

- 1. That the property owner proposes to use the property in a reasonable manner not permitted by an official control;**
- 2. The plight of the landowner is due to circumstances unique to the property not created by the landowner;**
- 3. The variance will not alter the essential character of the locality;**
- 4. The size of the new structure must not surpass the size of the current structures (3 structures totaling 50 square feet); and must maintain the required sideyard setback of 10 feet;**

5. The new structure will replace the current three structures, being erected no closer to the OHW level as presently sits; and
6. No trees will be cut down or destroyed during construction.

On motion by Perry Bushaw, and seconded by Pamela Harper, and unanimously carried, the meeting was adjourned at 6:40 p.m.

By: _____
Amos Baer, Chair